# Datuk Kasi Palaniappan & Anor v Setia Haruman Sdn Bhd & Ors

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO WA-24NCC-290–07 OF 2017
AZIZUL AZMI ADNAN J
30 AUGUST 2018

*Civil Procedure — Striking out — Minority shareholders alleging oppression — Defendants applied to strike out and remove plaintiffs — Whether reliefs prayed for by plaintiffs did not accord precisely with those provided for in s 346(2) of the Companies Act 2016 — Whether first plaintiff shareholder of first defendant — Whether first plaintiff entitled to maintain action*

*Companies and Corporations — Oppression — Minority shareholders — Plaintiffs commenced action against defendants alleging oppression of minority — Whether reliefs prayed for by plaintiffs did not accord precisely with those provided for in s 346(2) of the Companies Act 2016 — Whether first plaintiff shareholder of first defendant — Whether first plaintiff entitled to maintain action — Whether second defendant estopped from denying that first plaintiff was shareholder of first defendant when second defendant had previously acknowledged first plaintiff's effective equity interest in first defendant — Companies Act 2016 s 346*

Datuk Kasi Palaniappan ('the first plaintiff'), Tan Sri Mustapha Kamal ('the second defendant') and UEM Land Bhd ('the ninth defendant') were the beneficial owners of Setia Haruman Sdn Bhd ('the first defendant'). Impressive Circuit Sdn Bhd ('the second plaintiff') was a company controlled by the first plaintiff and was a shareholder in the first defendant. The plaintiffs in the present case commenced an action against the defendants alleging oppression of the minority. The defendants on the other hand applied to strike out the plaintiff's action. The seventh to ninth defendants also applied to remove the first plaintiff on the basis of misjoinder. The second to six defendants argued that there was a fundamental change to the scope of oppression actions in Malaysia with the introduction of s 346 of the Companies Act 2016 ('the CA 2016') (previously, oppression actions were covered under s 181 of the Companies Act 1965). It was argued that the broad discretion of court to order any relief it considered fit had now been removed, and that the courts could only grant the specific reliefs that had been expressly set out in paras (a)–(e) of s 346(2). Because the reliefs prayed for by the plaintiffs did not accord precisely with those provided for in s 346(2) of the CA 2016, the action ought to be summarily dismissed. The first plaintiff submitted that he could validly

maintained the present action even though he was not a registered shareholder of the first defendant based on the authority of the case of *Tob Chee Hoong v Tob Chee Choong & Ors* [2017] MLJU 1303 ('the *Tob*'s case'). Further, the plaintiffs submitted that the second defendant had previously acknowledge the first plaintiff's effective equity of 26.25% in the first defendant and was thus estopped from denying that the first plaintiff was a shareholder of the first defendant. The case of *Owen Sim Liang Khui v Piasau Jaya Sdn Bhd & Anor* [1996] 1 MLJ 113 ('the *Owen*'s case') was cited in support of this submission.

**Held**, allowing the striking out of the first plaintiff and the misjoinder application; and refusing the striking out of the second plaintiff:

(1) Based on the proper construction of s 346 of the CA 2016, the court retained its wide discretion to grant any and all reliefs that it considered fit in the circumstances. This power was only exercisable where any of the pre-conditions in sub-s (1) was met, and not otherwise. The reasons underlying this determination were as followed: (a) there was nothing in sub-s (2) that expressly limited the powers of court to the specific items of relief set out in sub-paras (a)–(e); (b) if the parliament intended to introduce a fundamental revision of the law relating to oppression and unfair discrimination, this intent would have been clearly spelt out in the Companies Bill 2015 but no such intention appeared to have been expressed in the explanatory statement; and (c) the strained construction suggested by the second to six defendants would lead to an absurd result. If the second to sixth defendant was correct, then there was no limit to the circumstances where a complainant may seek for an order under s 346, which would clearly be an untenable position. The reliefs prayed for against the second to sixth defendants were reliefs that the court may grant under s 346(2). Whether the court ought to do so would be a matter for determination upon the merits of the case (see paras 12–13).

(2) The first plaintiff alleged that he was being oppressed by conduct that was being carried out at the second defendant, when he was not shareholder of the second defendant. This he was not entitled to do, by the plain words of s 346(1) of the CA 2016. It would be apparent that the scope of s 346 of the CA 2016 was only triggered when the act complained of related to the affairs of a company of which the complainant was a member or debenture holder (see paras 17, 19 & 21).

(3) *Tob*'s case established that a person need not be a direct shareholder in a company to complain of oppressive conduct being carried out at that company, but that person's complaint must be related back to the affairs of a company in which he or she was a shareholder. The facts of *Tob*'s case could be distinguished from those of the present case because in the present case, the first plaintiff had not alleged that he was being oppressed at the companies of which he was a shareholder (see paras 15 & 22).

(4) *Owen*'s case could be distinguished on the basis that, in that case, it was the conduct of the defendants that had deprived the plaintiff of his status as a shareholder in the subject company. Having removed him as a shareholder, it was not open to the defendants to cite the fact that he was not a shareholder to defeat his claim for oppression under s 181 of the Companies Act 1965. In the present case, there was no suggestion at all that the fact that the first plaintiff was not a direct shareholder in the first defendant was somehow the result of the acts of one or more of the defendants (see para 25).

**[Bahasa Malaysia summary**

Datuk Kasi Palaniappan ('plaintif pertama'), Tan Sri Mustapha Kamal ('defendan kedua') dan UEM Land Bhd ('defendan kesembilan') adalah pemilik-pemilik benefisial Setia Haruman Sdn Bhd ('defendan pertama'). Impressive Circuit Sdn Bhd ('plaintif kedua') adalah sebuah syarikat yang dikawal oleh plaintif pertama dan merupakan pemegang saham dalam defendan pertama. Plaintif-plaintif dalam kes ini telah memulakan tindakan terhadap defendan-defendan dengan mendakwa penindasan minoriti. Defendan-defendan sebaliknya telah memohon untuk membatalkan tindakan plaintif. Defendan-defendan ketujuh hingga kesembilan juga telah memohon agar plaintif pertama dikeluarkan atas asas kesalahcantuman. Defendan-defendan kedua hingga keenam berhujah bahawa terdapat perubahan fundamental kepada skop tindakan penindasan di Malaysia dengan pengenalan s 346 Akta Syarikat 2016 ('AS 2016') (sebelumnya, tindakan penindasan terjatuh di bawah s 181 Akta Syarikat 1965). Adalah dihujahkan bahawa budi bicara mahkamah yang luas untuk memerintahkan apa-apa relif yang diangapnya sesuai kini tiada lagi, dan bahawa mahkamah akan hanya memberikan relif spesifik yang dinyatakan dengan jelas dalam perenggan (a)–(e) s 346(2). Oleh kerana relif-relif yang dipohon oleh plaintif-plaintif tidak selaras dengan yang diperuntukkan dalam s 346(2) AS 2016, tindakan tersebut patut ditolak terus. Plaintif pertama berhujah bahawa dia boleh mengekalkan secara sah tindakan ini meskipun dia bukan pemegang saham yang berdaftar defendan pertama berdasarkan autoriti kes *Tob Chee Hoong v Tob Chee Choong & Ors* [2017] MLJU 1303 ('kes *Tob*'). Selanjutnya, plaintif-plaintif berhujah bahawa defendan kedua telahpun sebelum ini mengakui tentang ekuiti efektif plaintif pertama sebanyak 26.25% dalam defendan pertama dan oleh itu diestopkan daripada menafikan bahawa plaintif pertama adalah pemegang saham defendan pertama. Kes *Owen Sim Liang Khui v Piasau Jaya Sdn Bhd & Anor* [1996] 1 MLJ 113 ('kes *Owen*') telah dipetik bagi menyokong hujah ini.

**Diputuskan**, membenarkan pembatalan plaintid pertama dan permohonan kesalahcantuman; dan menolak pembatalan plaintif kedua:

(1) Berdasarkan penggubalan sewajarnya s 346 AS 2016, mahkamah

mengekalkan budi bicara luasnya untuk memberikan apa-apa dan semua relif yang difikirkannya sesuai mengikut keadaan. Kuasa ini hanya dilaksanakan di mana apa-apa prasyarat dalam sub-s (1) tidak dipenuhi, dan bukan sebaliknya. Sebab-sebab yang berasaskan penentuan ini adalah sebagaimana berikut: (a) tiada apa-apa dalam sub-s (2) yang jelas menghadkan kuasa mahkamah berdasarkan butir-butir spesifik berhubung relif yang dinaytakan dalam subperenggan (a)–(e); (b) jika parlimen berniat untuk memperkenalkan semakan undang-undang yang fundamental berkaitan penindasan dan diskriminasi tidak adil, niat ini sepatutnya jelas dinyatakan dalam Rang Undang-Undang Syarikat 2015 tetapi niat sebegini tidak kelihatan telah dinyatakan dalam huraian; dan (c) hujah yang dicadangkan oleh defendan-defendan kedua hingga keenam akan membawa kepada hasil yang tidak masuk akal. Jika defendan kedua hingga keenam adalah betul, makan tidak ada had kepada keadaan itu di mana pengadu boleh memohon perintah di bawah s 346, yang jelas suatu kedudukan yang tidak meyakinkan. Relif-relif yang dipohon terhadap defendan-defendan kedua hingga keenam adalah relif-relif yang boleh diberikan oleh mahkamah di bawah s 346(2). Sama ada mahkamah patut berbuat demikian adalah suatu perkara untuk ditentukan atas merit kes (lihat perenggan 12–13).

(2) Plaintif pertama mengatakan bahawa dia telah ditindas oleh perbuatan yang dilakukan di defendan kedua, walhal dia bukan pemegang saham defendan kedua. Dia tidak berhak melakukan sedemikian, berdasarkan kata-kata biasa s 346(1) AS 2016. Ia adalah jelas bahawa skop s 346 AS 2016 hanya digunapakai apabila perbuatan yang diadukan adalah berkaitan urusan syarikat yang mana pengadu tersebut merupakan ahli atau pemegang debentur (lihat perenggan 17, 19 & 21).

(3) Kes *Tob* membuktikan bahawa seseorang tidak perlu menjadi pemegang saham secara langsung dalam syarikat untuk mengadu perbuatan menindas yang dilakukan di syarikat tersebut, tetapi aduan orang itu mestilah berkait dengan urusan syarikat yang mana dia adalah pemegang saham. Fakta kes *Tob* boleh dibezakan dengan kes ini kerana dalam kes ini, plaintif pertama tidak mengatakan bahawa dia telah ditindas di syarikat-syarikat di mana dia pemegang saham (lihat perenggan 15 & 22).

(4) Kes *Owen* boleh dibezakan atas asas bahawa, dalam kes tersebut, ia adalah perbuatan defendan-defendan yang menafikan plaintif statusnya sebagai pemegang saham dalam syarikat tersebut. Setelah dia dikeluarkan sebagai pemegang saham, ia tidak terbuka kepada defendan-defendan untuk memetic fakta bahawa dia bukan seorang pemegang saham untuk menggagalkan tuntutannya untuk penindasan di bawah s 181 Akta Syarikat 1965. Dalam kes ini, tiada cadangan langsung bahawa fakta yang plaintif pertama bukan pemegang saham secara langsung dalam

defendan pertama adalah akibat daripada perbuatan salah satu atau lebih defendan-defendan (lihat perenggan 25).]

**Notes**

For a case on minority shareholders alleging oppression, see 2(5) *Mallal's Digest* (5th Ed, 2017 Reissue) para 9398.

For cases on minority shareholders, see 3(1) *Mallal's Digest* (5th Ed, 2018 Reissue) paras 805–825.

**Cases referred to**

*Foo Loke Ying & Anor v Television Broadcasts Ltd & Ors* [1985] 2 MLJ 35; [1985] 1 CLJ 511, SC (refd)

*Kesatuan Pekerja-Pekerja Bukan Eksekutif Maybank Bhd v Kesatuan Kebangsaan Pekerja-Pekerja Bank & Anor* [2018] 2 MLJ 590; [2017] 3 AMR 340; [2017] 4 CLJ 265; [2017] 4 MLRA 298, FC (refd)

*Nothman v Barnet London Borough Council* [1978] 1 WLR 220, CA (refd)

*Owen Sim Liang Khui v Piasau Jaya Sdn Bhd & Anor* [1996] 1 MLJ 113; [1996] 4 CLJ 716, FC (distd)

*Press Metal Sarawak Sdn Bhd v Etiqa Takaful Bhd* [2016] 5 MLJ 417; [2016] 9 CLJ 1, FC (refd)

*Tob Chee Hoong v Tob Chee Choong & Ors* [2017] MLJU 1303; [2017] 1 LNS 1256, HC (distd)

**Legislation referred to**

Companies Act 1965 (repealed by the Companies Act 2016) s 181, 181(2)

Companies Act 2016 ss 181, 346, 346(1), (1)(a), (2), (2)(a), (2)(b), (2)(c), (2)(d), (2)(e)

*Owee Chia Ming (Khor Heng How with him) (Owee & Ho) for the plaintiffs.*

*Mohamad Sofian Shamsudin (Abdul Halim Ushah & Assoc) for the first defendant.*

*M Pathmanathan (M Pathmanathan & Co) for the second, third, fourth, fifth and sixth defendants.*

*G Vijay Kumar (Selvi Mo Yin Arumugam with him) (Lee Hishammuddin Allen & Gledhill) for the seventh, eighth and ninth defendants.*

**Azizul Azmi Adnan J:**

INTRODUCTION

**[1]** The plaintiffs in this case commenced an action against the defendants alleging oppression of the minority. The defendants applied to strike out the plaintiffs' action. The seventh to ninth defendants also applied to remove the first plaintiff on the basis of misjoinder.

**[2]** After hearing submissions, I allowed the striking out of the first plaintiff and the misjoinder application. I refused the striking out of the second plaintiff.

BACKGROUND

**[3]** Setia Haruman Sdn Bhd is the master developer of Cyberjaya. This dispute arose between the three ultimate beneficial owners of Setia Haruman: Datuk Kasi Palaniappan ('the first plaintiff') on the one hand, and Tan Sri Mustapha Kamal ('the second defendant') and UEM Land Bhd ('the ninth defendant') on the other. Impresive Circuit Sdn Bhd, the second plaintiff, is company controlled by Datuk Kasi and is a shareholder in Setia Haruman. The third to the eighth defendants are directors of Setia Haruman. The third to the fifth plaintiffs are the children of Tan Sri Mustapha Kamal. The seventh and eighth defendants sit on the board of Setia Haruman as nominees of UEM Land Bhd.

**[4]** The shareholding structure of Setia Haruman is set out in a diagram at para 16, post.

THE SCOPE OF S 346

**[5]** It was contended by Dato' Pathmanathan for the second to sixth defendants that there has been a fundamental change to the written law relating to minority oppression with the introduction of s 346 of the Companies Act 2016. In gist, he argued that the broad discretion granted to the court to order any relief that it considers fit has now been removed, and that the courts may only grant the specific reliefs that have been expressly set out in paras (a)–(e) of s 346(2). Because the reliefs prayed for by the plaintiffs did not accord precisely with those provided for in s 346(2), it was contended by Dato' Pathmanathan that the action ought to be summarily dismissed.

**[6]** The reason put forward for this construction was the difference in the wordings of s 346(2) of the Companies Act 2016 and s 181(2) of the Companies Act 1965. These two sections are juxtaposed in the following table to illustrate the difference.

| Section 181(2) of the Companies Act 1965 | Section 346(2) of the Companies Act 2016 |
|---|---|
| (2) If on such application the Court is of the opinion that either of those grounds is established the Court may, with the view to bringing to an end or remedying the matters complained of, make such order as it thinks fit and without prejudice to the generality of the foregoing the order may — | (2) If on such application the Court is of the opinion that either of those grounds is established, the Court may make such order as the Court thinks fit with the view to bringing to an end or remedying the matters complained of, and without prejudice to the generality of subsection (1), the order may — |
| (a) direct or prohibit any act or cancel or vary any transaction or resolution; | (a) direct or prohibit any act or cancel or vary any transaction or resolution; |
| (b) regulate the conduct of the affairs of the company in future; | (b) regulate the conduct of the affairs of the company in the future; |
| (c) provide for the purchase of the shares or debentures of the company by other members or holders of debentures of the company or by the company itself; | (c) provide for the purchase of the shares or debentures of the company by other members or debenture holders of the company or by the company itself; |
| (d) in the case of a purchase of shares by the company provide for a reduction accordingly of the companys capital; or | (d) in the case of a purchase of shares by the company, provide for a reduction accordingly of capital of the company; or |
| (e) provide that the company be wound up. | (e) provide that the company be wound up. |

**[7]** The difference in wording that is germane for consideration is emphasised in the excerpts above.

**[8]** In s 181, the word 'foregoing' referred to the opening words of sub-s (2). Accordingly, the plain meaning of this section was that the courts was vested with a broad discretion to make any order that it thinks fit, including but not limited to those set out in sub-paras (a)–(e).

**[9]** By contrast, the s 346(2) refers not to the opening words of that subsection, but rather to sub-s (1). Subsection (1), it will be recalled, provides for the qualifying circumstances under which a shareholder or debenture holder apply to court for relief. These are where it is alleged that there was conduct that amounted to oppression of, unfair discrimination against, or prejudice to, the complainant.

**[10]** Dato' Pathmanathan argued that this change in wording introduced a fundamental change to the scope of oppression actions in Malaysia. The new section — it was argued — meant the circumstances under which a complainant may apply to court was no longer limited those specified in sub-s

(1), namely oppressive, discriminatory or otherwise prejudicial conduct. Secondly, it was contended that this change meant that the court was no longer vested with the wide discretion to grant any relief that it considered fit in the circumstances, but instead may only grant the relief specifically set out in sub-paras (a)–(e), and nothing more.

**[11]** For this reason, it was argued that the plaintiffs' claim ought to be dismissed in limine, as the reliefs sought in the prayers of the originating summons strayed outside the bounds of those permissible reliefs under sub-paras (a)–(e).

**[12]** I am unable to agree with this contention. In my judgment, based on the proper construction of s 346, the court retains its wide discretion to grant any and all reliefs that it considers fit in the circumstances. This power is only exercisable where any of the pre-conditions in sub-s (1) is met, and not otherwise. The reasons underlying this determination are as follows:

(a) s 346(2) clearly provides that a court 'may make such order as the court thinks fit with the view to bringing to an end or remedying the matters complained of'. This is nothing in sub-s (2) that expressly limits the powers of court to the specific items of relief set out in sub-paras (a)–(e). Accordingly, these items of relief must be read as specific examples of the orders that the court may make, if it considers fit to do so;

(b) the explanatory statement to a Bill may legitimately be used as an aid to statutory construction (see, for example, *Press Metal Sarawak Sdn Bhd v Etiqa Takaful Bhd* [2016] 5 MLJ 417; [2016] 9 CLJ 1 (FC), which retreats from the stricter attitude of the courts in *Foo Loke Ying & Anor v Television Broadcasts Ltd & Ors* [1985] 2 MLJ 35; [1985] 1 CLJ 511 (SC)). The explanatory statement to cl 346 of the Companies Bill 2015 states as follows:

> Fasal 346 bertujuan untuk mengadakan peruntukan bagi alasan atau hal keadaan dan remedi yang terdapat dalan hal penindasan.

In my considered opinion, had parliament intended to introduce a fundamental revision of the law relating to oppression and unfair discrimination, this intent would have been clearly spelt out in the Companies Bill 2015. No such intention appear to have been expressed in the explanatory statement, which supports the alternative argument that in fact, parliament had not intended to effect any major change to the law; and

(c) it is an accepted principle of construction that the court is to favour an interpretation of statute that does not lead to an absurd result: see the dicta of Denning MR in *Nothman v Barnet London Borough Council* [1978] 1 WLR 220, as applied by the Federal Court recently in *Kesatuan*

*Pekerja-Pekerja Bukan Eksekutif Maybank Bhd v Kesatuan Kebangsaan Pekerja-Pekerja Bank & Anor* [2018] 2 MLJ 590; [2017] 3 AMR 340; [2017] 4 CLJ 265; [2017] 4 MLRA 298. In my view, the strained construction suggested by counsel will lead to an absurd result. There must necessarily be a pre-defined set of circumstances which would entitle a complainant to move the court under s 346. These are those which are set out in paras (a) and (b) of s 346(1). If counsel for the second to sixth defendant is correct, then there is no limit to the circumstances where a complainant may seek for an order under s 346, which would clearly be an untenable position. The golden thread that runs through s 346 is the idea that a company may be run in manner that results in oppression or unfair discrimination, usually of a minority in a company. In such circumstances, the law provides for the ability of the minority to apply to court to seek relief. If learned counsel is correct in his submission, then a complainant can apply to court for the specific reliefs without the need to show the existence of oppression or unfair discrimination. I cannot accept this as a correct statement of the law.

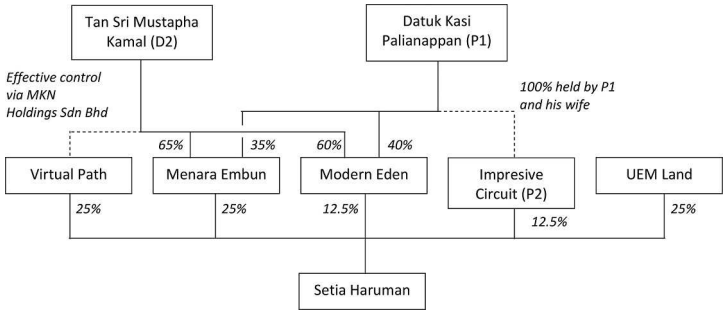
**[13]** I am of the view that the reliefs prayed for against the second to sixth defendants are reliefs that the court may grant under s 346(2). Whether the court ought to do so will be a matter for determination upon the merits of the case.

WHETHER DATUK KASI PALIANAPPAN MAY MAINTAIN THIS ACTION IN RESPECT OF PURPORTED OPPRESSION AT SETIA HARUMAN

**[14]** The second issue for consideration was whether the first plaintiff, Datuk Kasi Palianappan, may validly maintain this action for purported oppression at Setia Haruman, when he is not in fact a registered shareholder of Setia Haruman. Mr Owee for the plaintiffs contended that he may do so, on the authority of the case of *Tob Chee Hoong v Tob Chee Choong & Ors* [2017] MLJU 1303; [2017] 1 LNS 1256. *Tob*'s case established the principle that the expression 'affairs of the company' in s 346(1)(a) is to be construed widely, and would encompass oppressive conduct that is conducted at a subsidiary or a holding company.

**[15]** While I fully agree with the ratio of the decision of Mohd Nazlan J in *Tob*'s case, the facts of *Tob*'s case can be distinguished from those of the present case because in the present case, Datuk Kasi had not alleged that he was being oppressed at the companies of which he is a shareholder.

**[16]** The point is best illustrated in a diagram.




**[17]** From the diagram above, it will be seen that Datuk Kasi is not a shareholder at Setia Haruman. His effective equity interest in Setia Haruman is 26.25%, through his holdings in Impresive Circuit Sdn Bhd ('the second plaintiff'), Menara Embun Sdn Bhd and Modern Eden Sdn Bhd.

**[18]** He would have been perfectly entitled to allege, based on the principle in *Tob*'s case, that he was being oppressed at Menara Embun or Modern Eden by virtue of acts conducted at Setia Haruman. This is because the acts carried out at the Setia Haruman would amount to affairs of Menara Embun and/or Modern Eden. In my judgment, it makes no difference that Setia Haruman is not a subsidiary of either Menara Embun or Modern Eden. It suffices that either company holds shares in Setia Haruman, for conduct carried out at Setia Haruman to be the subject of a complaint of oppression at either Menara Embun or Modern Eden.

**[19]** However, that is not what Datuk Kasi alleged. He did not complain that his rights as a shareholder of Menara Embun or Modern Eden had been infringed by reason of oppressive conduct carried out at Setia Haruman. He alleged that he was being oppressed by conduct that was being carried out at Setia Haruman, when he was not shareholder of Setia Haruman. This he was not entitled to do, by the plain words of s 346(1):

> (1) Any member or debenture holder of a company may apply to the Court for an order under this section on the ground —
>
> (a) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or debenture holders including himself or in disregard of his or their interests as members, shareholders or debenture holders of the company; or
>
> (b) that some act of the company has been done or is threatened or that some resolution of the members, debenture holders or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or debenture holders, including himself.

**[20]** The point can be illustrated by inserting the names of the relevant companies into the wordings of s 346(1)(a):

> (1) Any member ... of [Modern Eden/Menara Embun] may apply to the Court for an order under this section on the ground —
>
> (a) that the affairs of [Modern Eden/Menara Embun] are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or debenture holders including himself or in disregard of his or their interests as members, shareholders or debenture holders of [Modern Eden/Menara Embun];

**[21]** It will be apparent that the scope of s 346 is only triggered when the act complained of relates to the affairs of a company of which the complainant is a member or debenture holder.

**[22]** *Tob*'s case of course establishes that a person need not be a direct shareholder in a company to complain of oppressive conduct being carried out at that company, but that person's complaint must be related back to the affairs of a company in which he or she is a shareholder. In the plaintiffs' originating summons, they had sought, among others, for:

> satu deklarasi bahawa Defendan Ke-2 sehingga Ke-9 masing-masing telah mengurus dan menjalankan hal-ehwal ('affairs') Defendan Pertama, Setia Haruman Sdn. Bhd. (No. Syarikat 425145-U) ('Syarikat') dan/atau dengan menggunapakai ('exercised') kuasa mereka secara menindas ('oppressive') dan/atau dengan mengabaikan dan/atau bertindak secara memprejudiskan dengan tidak adil terhadap kepentingan Plaintif-Plaintif sebagai ahli-ahli Syarikat tersebut.

**[23]** It can be seen that the first plaintiff did not at all allege that the acts carried out at Setia Haruman amounted to oppression of the first plaintiff qua shareholder of Menara Embun and/or Modern Eden. Three points may be made:

(a) the issue is not one of mere semantics, as it relates to the jurisdiction of the courts to grant the reliefs sought. If none of the preconditions set out in s 346(1) of the Companies Act 2016 is fulfilled, then the court is not seised with the power to grant the reliefs sought;

(b) significantly, had the contention of oppression been properly pleaded, it would be incumbent upon the first plaintiff to lead evidence regarding the conduct of the affairs of Menara Embun and Modern Eden; and

(c) the reliefs sought and the cause of action upon which the plaintiffs rely are creatures of statute, and thus must be construed within the strict confines of that statute.

**[24]** Mr Owee for the plaintiffs sought to argue that Tan Sri Mustapha Kamal had previously acknowledged Datuk Kasi's effective equity interest of 26.25% in Setia Haruman and was thus estopped for denying that he (Datuk Kasi) is a shareholder in Setia Haruman. The case of *Owen Sim Liang Khui v Piasau Jaya Sdn Bhd & Anor* [1996] 1 MLJ 113; [1996] 4 CLJ 716 was cited in support of this proposition.

**[25]** The short answer to this contention is that it was the first plaintiff himself who had arranged his holdings in the affected companies in the manner that they appear in the diagram at para 16 *ante*. *Owen Sim Liang Khui v Piasau Jaya Sdn Bhd* can be distinguished on the basis that, in that case, it was the conduct of the defendants that had deprived the plaintiff of his status as a shareholder in the subject company. Having removed him as a shareholder, it was not open to the defendants to cite the fact that he was not a shareholder to defeat his claim for oppression under s 181 of the Companies Act 1965. In the present case, there is no suggestion at all that the fact that Datuk Kasi was not a direct shareholder in Setia Haruman was somehow the result of the acts of one or more of the defendants.

**[26]** For the reasons that I have explained:

(a) the applications in encls 13–14 to strike out and to remove the first plaintiff were allowed with costs; and

(b) the applications in encls 11–12 were allowed in part only (to remove the first plaintiff from this action). As this application was allowed in part, I considered it appropriate for there not to be any order of costs.

*Striking out of first plaintiff and misjoinder application allowed; striking out of second plaintiff refused.*

Reported by Dzulqarnain Ab Fatar